

ORIGINAL

**IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

**CITY OF CINCINNATI
801 Plum Street
Cincinnati, Ohio 45202**

And

**STATE OF OHIO ex rel.
CITY SOLICITOR
PAULA BOGGS MUETHING
801 Plum Street, Room 214
Cincinnati, Ohio 45202**

**Plaintiffs/
Relators,**

-vs-

**PE ALMS HILL REALTY, LLC
349 Case Road
Lakewood, New Jersey 08701**

**SERVE ALSO:
Vcorp Agent Service, Inc.
28602 Yeshiva Lane
Wickliffe, Ohio 44092**

And

**UNITED STATES OF AMERICA
United States Attorney
Attn: Civil Process Clerk
221 E. Fourth Street, Suite 400
Cincinnati, Ohio 45202**

And

**UNKNOWN TENANT(S)
2525 Victory Parkway
Cincinnati, Ohio 45206**

And

2525 VICTORY PARKWAY (In Rem)

**Defendant/
Respondent.**

Case No. A 15 00 883

Judge:

**COMPLAINT FOR
PRELIMINARY AND PERMANENT
INJUNCTIVE AND DECLARATORY
RELIEF AND APPOINTMENT OF A
RECEIVER**

REGULAR MAIL WAIVER

REGULAR MAIL WAIVER

REGULAR MAIL WAIVER

REGULAR MAIL WAIVER

TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY, OH
2015 FEB 17 A 11:00



D109588724 INI

[Handwritten signature]

Now come Plaintiff City of Cincinnati and State of Ohio ex rel. City Solicitor Paula Boggs Muething (hereinafter collectively the “City”), and for their Complaint against Respondents/Defendants PE Alms Hill Realty, LLC (hereinafter collectively “Defendants”) and the real properties located at 2525 Victory Parkway, Cincinnati, Ohio respectfully states as follows:

THE PARTIES

1. Plaintiff City of Cincinnati is a municipal corporation chartered under Article XVIII, Section 7 of the Ohio Constitution and acting pursuant to the Charter of the City of Cincinnati, through its City Solicitor.

2. The City brings this action on behalf of itself and its residents to obtain injunctive relief.

3. The City of Cincinnati brings this action pursuant to R.C. 715.30 on behalf of itself and its residents to obtain injunctive relief to abate a public nuisance.

4. City Solicitor Paula Boggs Muething brings this action pursuant to Cincinnati Municipal Code Section 1501-27 to obtain injunctive relief to correct violations of the Cincinnati Municipal Code.

5. Relator City Solicitor Paula Boggs Muething is the duly appointed, qualified, and acting City Solicitor of the City of Cincinnati and is a party charged by R.C. 3767.03 with the prevention, prosecution and abatement of any public nuisance within the City of Cincinnati.

6. Relator City Solicitor Paula Boggs Muething brings this present action in her official capacity on behalf of the State of Ohio.

7. Upon information and belief, Defendant PE Alms Hill Realty, LLC is and has been at all times relevant to this action, the owner and/or a person in control of 2525 Victory Parkway, Cincinnati, Ohio

8. Upon information and belief, real property that is the subject matter of this action is commonly known as 2525 Victory Parkway, Cincinnati, Ohio on parcel number 066-

0001-0129-00 as identified by the Hamilton County Auditor, upon which is constructed a commercial building.

9. Upon information and belief, the United States of America may have an interest in the property because of the project-based subsidy provided by the Department of Housing and Urban Development.

10. Upon information and belief, Unknown Tenant(s) have an interest in the property due to their contractual rights pursuant to leases agreements with Defendant PE Alms Hill Realty, LLC.

JURISDICTION AND VENUE

11. Jurisdiction and venue are proper in this Court.

STATEMENT OF FACTS

12. 2525 Victory Parkway is a multi-family residential building located in the Walnut Hills community of the City of Cincinnati.

13. Upon information and belief, occupied units contained within 2525 Victory Parkway contain violations of Chapter 1117 of the Cincinnati Municipal Code including roach infestations, broken cabinets, plumbing issues and plaster damage.

14. The City of Cincinnati provided prior notice of these violations on December 16, 2014.

COUNT I: PUBLIC NUISANCE – UNFIT LIVING CONDITIONS **(Ohio Revised Code Chapter 3767.41)**

15. The City incorporates by reference as if fully restated herein all of the allegations of the preceding paragraphs.

16. 2525 Victory Parkway is a menace to the public health, welfare, or safety; is structurally unsafe, unsanitary, or not provided with adequate safe egress; constitutes a fire hazard, is otherwise dangerous to human life, or is otherwise no longer fit and habitable; and its

current use constitutes a hazard to the public health, welfare, or safety due to inadequate maintenance, dilapidation, obsolescence, or abandonment.

COUNT II: PUBLIC NUISANCE
(Common Law)

17. The City incorporates by reference as if fully restated herein all of the allegations of the preceding paragraphs.

18. Defendant has created and maintained a nuisance per se at 2525 Victory Parkway through violations of the Ohio Revised Code and Cincinnati Municipal Code.

19. Defendant's negligent, reckless and intentional conduct significantly and unreasonably interferes with the public health, welfare and safety in Cincinnati.

20. Defendant's creation and maintenance of the nuisance has produced a long-lasting effect which Defendant knows or reasonably should know has a significant effect on public health, welfare and safety in Cincinnati and the residents of Cincinnati have a common right to be free from such conduct.

21. Defendant's creation and maintenance of the nuisance caused the City damage, including increased police, fire, health, emergency, and corrections costs for inspections and the cost of attempting to eliminate the hazard and decreased tax revenues resulting from the depreciated value of the affected homes and all surrounding real estate.

COUNT III: BUILDING AND FIRE CODE VIOLATIONS
(Ohio Revised Code 715.30)

22. The City incorporates by reference as if fully restated herein all of the allegations of the preceding paragraphs.

23. Conditions exist at 2525 Victory Parkway in violation of Title XI of the Cincinnati Municipal Code and those violations constitute a hazard to public health, safety and welfare.

24. Consequently, 2525 Victory Parkway constitutes a public nuisance.

25. Defendant created, continue, and contribute to the public nuisance.

26. Upon information and belief, those conditions have not been remedied.

27. The City is entitled to an injunction ordering the abatement of the public nuisance.

WHEREFORE, the City requests that this Court issue the following relief:

A. Grant a preliminary and permanent judgment declaring 2525 Victory Parkway, Cincinnati, Ohio, including the building and any common areas, constitute public nuisance as defined by R.C. 3767.41.

B. For an order granting a preliminary and permanent injunction requiring Defendant to abate the public nuisance forthwith pursuant to R.C. 3767.41;

C. For an order appointing a receiver to abate the public nuisance if the Defendant fail to abate the public nuisance pursuant to R.C. 3767.41;

D. Enter an injunctive order for the sale of 2525 Victory Parkway, pursuant to R.C. 3767.41 if the receiver has abated the public nuisance and the Court determines a sale outweighs the benefit of not selling 2525 Victory Parkway;

E. Any other injunctive relief that may arise relating to the appointment of a receiver and abatement of the public nuisance including, but not limited to, providing access to 2525 Victory Parkway for an assessment by experts to determine the financial and constructive plan needed to rehabilitate the building; and performing such work and furnishing materials necessary to comply with the code and abate the public nuisance.

F. For an order granting a preliminary and permanent injunction pursuant to Cincinnati Municipal Code 1501-27 requiring Defendants to comply with all health and safety requirements relating to Title XI of the Cincinnati Municipal Code;

G. For an order requiring Defendants to pay the costs of this action, including attorneys' fees;

H. Awarding the City such other extraordinary, declaratory and/or injunctive relief as permitted by law or equity as necessary to assure that the City has an effective remedy; and

I. For such other and further relief as the Court deems equitable, just and proper.

Respectfully submitted,

PAULA BOGGS MUETHING (0080018)
CITY SOLICITOR

/s/ Mark R. Manning

Mark R. Manning (0088331)

Assistant City Solicitor

801 Plum Street, Room 214

Cincinnati, Ohio 45202

Phone: (513) 352-4576

Fax: (513) 352-1515

Email: mark.manning@cincinnati-oh.gov

*Trial attorney for City of Cincinnati and
Relator for the State of Ohio*